

REMARKS

The present Amendment responds to the Advisory Action dated May 8, 2008. A Notice of Appeal was previously filed in this case on January 22, 2008. Accordingly, this Amendment and RCE are timely if filed by June 22, 2008 and accompanied by a three (3) month extension of time concurrently filed herewith.

In the Advisory Action, the Examiner maintained his position that the claims are unpatentable over the combined teachings of Penner (US6235682) and Feucht (US6365550). Applicants have amended the claims in effort to address the Examiner's concerns highlighted in the Advisory Action.

At the outset, the Examiner's attention is first directed to new independent claim 41. This claim has been provided based upon the Examiner's comments in the Advisory Action, wherein the Examiner stated: "[t]he Examiner only finds a composition comprising S-metolachlor plus benoxacor plus isopar (need name), stearic acid or stearyl alcohol potentially allowable since benoxacor appears to be a required component of the formulations in Table 1 (see final rejection)." Applicants did, however, add "metolachlor" to component a) of the composition. This is because Applicants believe that if the Examiner takes the position that S-metolachlor is supported by the specification, then metolachlor is necessarily supported by the specification. Applicants have expanded upon this position in the following paragraphs. Further, as the Examiner has requested, Applicants have not used the trademark Isopar® in the claim. Rather, this claim element reads "isoparaffinic hydrocarbon fluid". Support in the specification for this may be found, for example, on page 3, 4th full paragraph, which provides:

Particularly preferred hydrocarbon fluids for use as the lipophilic additives of the present invention are synthetic iso-paraffin fluids such as Isopar® V available from Exxon Chemical Company.

Based upon the Examiner's comment in the Advisory Action, Applicants respectfully submit that new claim 41 is in condition for allowance.

In addition, Applicants have cancelled 26-40. Claim 1 has been amended to remove the statement of intended use from the preamble and to recite that acetamide is selected from metolachlor and S-metolachlor. Claim 1 has further been amended to now claim "a synergistically active amount of a lipophilic additive comprising at least one member selected from the group consisting of stearic acid, stearyl alcohol, and hydrocarbon fluids containing greater than 50 wt.% paraffins." Consequently, claims 5-8 have been cancelled. Further, claims 13 and 14 have been amended so that they now depend from claim 1.

With a closer look at the amendments of claim 1, Applicants first note that the claim now recites an acetamide selected from metolachlor and S-metolachlor. Applicants respectfully submit that the specification provides proper support for both species. Indeed, the Examiner has already stated that data has been provided for S-metolachlor. There are two (2) elements of asymmetry present in the compound metolachlor. Due to the presence of two elements of asymmetry, there are four (4) diastereomeric forms of metolachlor, including S-metolachlor. Accordingly, S-metolachlor is contained in metolachlor. If S-metolachlor is allowable, then it is appropriate to also allow metolachlor.

Next, Applicants note the amendments to element (b) of claim 1. Here, Applicants amended the claim to specifically include both stearic acid and stearyl alcohol. Applicants have amended the claim in this way because the Examiner seemed to indicate that these would be allowable. Particularly, in the Advisory Action, the Examiner stated that the composition containing stearic acid or stearyl alcohol "potentially allowable." Further, Applicants have amended the claim to remove C13-C20 fatty acids and C13-C20 fatty alcohols in effort to place the claim in better condition for the allowance. It does not appear that the inclusion of "hydrocarbon fluids containing greater than 50 wt.% paraffins" has raised a concern to the Examiner. Additionally, Isopar® is a hydrocarbon and the Examiner has also indicated that a composition containing this substituent is "potentially allowable". Accordingly, this element has remained in the claim.

Finally, the Examiner seems to indicate that the composition requires benoxacor to be allowable. Applicants respectfully object to this position. Benoxacor is not a necessary component in the composition, as specifically stated in the specification. For example, on page 1 of the specification, Applicants teach:

Surprisingly, it has now been found that combinations of at least one acetamide herbicide and at least one lipophilic additive exert a synergistic effect that is able to control the majority of weeds preferably occurring in crops of cultivated plants, without substantial injury to the cultivated plants.

Further, Applicants' specification on page 6 provides:

In addition to the acetamide herbicide, the lipophilic additive and optionally at least one compound from amongst the co-herbicides set forth above, the synergistic compositions according to the invention may contain at least one safener. Suitable safeners include benoxacor, cloquintocet, dichlormid, fenclorim, flurazole, fluxofenim, furilazole, mefenpyr and the agriculturally acceptable salts and esters thereof such as cloquintocet-mexyl and mefenpyr-diethyl. Particularly preferred safeners include benoxacor.

Accordingly, benoxacor is an optional component of the composition. Moreover, it is well known in the art that safeners are included in products containing metolachlor or S-metolachlor, with and without further herbicide components to provide a safeneing effect of the crop that is being treated. Accordingly, one of ordinary skill in the art would recognize that while safeners provide benefits for the composition, there is also an understanding that safeners are not required to achieve the novel, herbicidal synergistic activity that Applicants have claimed in this application.

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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